IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SPECIAL JURISDICTION ORIGINAL SIDE

CHARTERED ACCOUNTANT REFERENCE NO. 6 OF 1999

In the matter of the Council of the
Institute of Chartered Accountants
of India, Indraprastha Marg,
New Delhi .. Petitioner

vs.

Shri M. J. Pethe, FCA,
Chartered Accountant,
Plot No.1000/3, Anupan Society,
Navi Peth, Pune-30. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S.Srikrishna i/b. M/s.Kanga & Co. for the petitioner.

Respondent present in person.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 12th August 2004

ORAL JUDGMENT (PER R.M. LODHA,J.)

The Secretary, Institute of Military Engineers, Pune (for short, `the complainant') filed a complaint against Shri M. J. Pethe, Chartered Accountant and the member of the Institute of Chartered Accountants of India, complaining the professional misconduct committed by him. We shall

refer to Shri M. J. Pethe hereafter as the respondent. The allegations against the respondent in the complaint were thus:

> "The respondent was chartered by the Institution of Military Engineers to carry out the audit of their funds for the year 1980-81 and 1981-82. During his tenure, the respondent did not bring to the notice of the Institution of military Engineers any lacuna or discrepancy in the system of accounting and certified the accounts of the Institution as correct. Subsequently it was revealed that there was a loss of funds to the tune of approximately Rs. 3.5 lakhs by way of encashment of Fixed Deposits Receipts (FDRs) before maturity which was not reflected in the cash book. This loss occasioned due to negligence and carelessness of the respondent. The respondent failed to check the FDRs and, thus, failed to carry out basic checks expected of him and that resulted in loss of Rs. 3.5 lakhs."

2. The copy of the complaint was sent to the respondent by the Institute of Chartered Accountants of India (for short, `the Council'). The respondent submitted his written statement. The Council was of the prima facie opinion that the respondent was guilty of professional misconduct and caused inquiry to be instituted against him and the matter was referred to the disciplinary committee constituted for the purpose. The disciplinary committee took on record the evidence placed before them and examined the complainant as

well as the respondent. After hearing the parties and upon consideration of the evidence, the disciplinary committee was of the opinion that the respondent was guilty of the professional misconduct within the meaning of Sections 21 and 22 of the Chartered Accountants Act, 1949 (for short, `Act of 1949') read with clause (7) of Part I of Second Schedule to the Act of 1949. The disciplinary committee forwarded its report to the Council. The Council concurred with the view of the disciplinary committee; held the respondent guilty of the professional misconduct and recommended to this Court that respondent be reprimanded. This is how this reference is placed before us.

3. We heard Dr.Virendra Tulzapurkar, the learned senior counsel for the Institute of Chartered Accountants of India and the respondent in person. We also perused the entire record available before us.

4. The gravamen of the charge against the respondent is that during his appointment as an auditor to carry out the audit of the funds of the complainant for the years 1980-81 and 1981-82, the respondent did not show requisite vigilance and could not detect the lacuna/discrepancy in the accounting system of the complainant, particularly the FDRs were not

checked and as a result thereof there was fraudulent encashment of the FDRs valuing to Rs. 3.5 lacs and loss to the complainant to that effect. In other words, due to dereliction on the part of the respondent the complainant sustained a loss of Rs. 3.5 lacs. The respondent in his examination before the disciplinary committee admitted that he did not physically verify the FDRs. His explanation was that since the duty was cast upon the regimental audit board of the physical verification of the FDRs, he relied on regimental audit board. However, he could not show by any reliable evidence that he had even gone through the report of the regimental audit board. He also admitted that he erred in not asking for any certificate from regimental audit board that they had physically verified FDRs. Interalia, the respondent was appointed to review and scrutinise the proceedings of regimental audit board and certify the correctness and suggest improvement wherever necessary. The respondent apparently neglected in scrutinising the proceedings of regimental audit board which was the work assigned to him as an auditor. It, thus, appears that the respondent failed to discharge his duty as an auditor responsibly. He certified the accounts of the complainant without proper scan and scrutiny. The standard of care and caution expected of him as an auditor appointed by the complainant to carry out the auditor of their funds for the years 1980-81 and 1981-82 was not maintained and that resulted in

the lacuna/discrepancy in the accounts of the complainant going undetected causing loss of funds to the tune of Rs. 3.5 lakhs by way of encashment of FDRs before maturity. The respondent failed to carry out the minimum basic checks for the audit.

5. Taking overall facts and circumstances of the case into consideration, we find that the view of the disciplinary committee and accepted by the Council that the respondent was guilty of professional misconduct under clause (7) of Part I of Second Schedule of the Act of 1949 cannot be faulted.

6. The Council had been quite considerate to the respondent in ultimately recommending to this Court that for the professional misconduct committed by the respondent, he may be reprimanded. We find no justification in not accepting the recommendation of the Council.

7. We, accordingly, pass the following order:

(i) The finding recorded by the disciplinary committee and accepted by the Council that the respondent was guilty of professional misconduct under clause (7) of Part I of Second Schedule to the Act of 1949 is

accepted.

(ii)The order reprimanding the respondent is accordingly passed.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)